National Metal Processing, Inc. and Amstaff, Inc. *and* Local 7267, United Paperworkers International Union, AFL–CIO. Case 7–CA–34299

July 26, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND LIEBMAN

Based on a charge and an amended charge filed by the Charging Party, Local 7267, United Paperworkers International Union, AFL–CIO (the Union), on March 3 and June 28, 1993, respectively, the Regional Director for Region 7 issued a complaint on June 20, 1995, alleging that the Respondents, National Metal Processing, Inc. (National) and Amstaff, Inc. (Amstaff), violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union about the reinstatement of employees who had been unlawfully locked out of their jobs. Thereafter, Respondents National and Amstaff separately filed timely answers, admitting in part and denying in part the allegations in the complaint, but denying the commission of any unfair labor practices.

On March 20, 1997, the parties filed a motion to transfer case to the Board and for decision based on stipulated record. The parties agreed that the stipulation of facts and attached exhibits constitute the entire record in this case, and that no oral testimony is necessary or desired by any of the parties. The parties waived a hearing before, the making of findings of fact and conclusions of law by, and the issuance of a decision by an administrative law judge. The parties stated their desire to submit this case directly to the Board for findings of fact, conclusions of law, and the issuance of a Decision and Order.

On July 16, 1997, the Executive Secretary, by direction of the Board, issued an order granting the motion, approving the stipulation, and transferring the proceeding to the Board. Thereafter, Respondent National, Respondent Amstaff, and the General Counsel filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record and briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent National, a corporation, with an office and place of business in Detroit, Michigan, was engaged in the manufacturing process of "pickling" steel for use as automobile bumpers. During the calendar year ending December 31, 1994, a representative period, Respondent National, in the course and operation of its business, purchased and received at its Detroit, Michigan facility, goods and materials valued in excess of $50,000 which were shipped directly to its facility from points outside the State of Michigan.

At all material times, Respondent Amstaff, a corporation, with an office and place of business in Novi, Michigan, was engaged in the operation of a personnel leasing company. During the calendar year ending December 31, 1994, a representative period, Respondent Amstaff provided employee leasing services valued in excess of $50,000 to its customer, Respondent National, an employer directly engaged in interstate commerce.

The parties have stipulated, and we find, that Respondent National and Respondent Amstaff are each an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The following employees constitute an appropriate bargaining unit within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, including truckdrivers and shipping and receiving employees employed by National Metal Processing, Inc. at its facility located at 6440 Mack Avenue, Detroit, Michigan; but excluding office clerical employees, guards, and supervisors as defined in the Act.

On January 30, 1974, pursuant to a Board-conducted election, Local 267, International Union, Allied Industrial Workers of America, AFL–CIO (AIW Local 267) was certified as the exclusive 9(a) collective-bargaining representative of the employees in the above unit, when located at National's former manufacturing facility.

In September 1993, AIW Local 267's International parent union merged with the United Paperworkers International Union, AFL–CIO. As a result, since September 23, 1993, the Union has been the successor union to AIW Local 267. Since that date, the Union has also been the exclusive collective-bargaining representative of employees in the production and maintenance unit at National's plant.

Commencing about March 4, 1988, National ceased directly employing production and maintenance employees. Instead, it used the services of successive personnel leasing firms to supply it with production and maintenance employees for work at its steel-pickling facility. One of those firms, Branch International Services (Branch), entered into a personnel leasing service agreement with National in 1990. Branch recognized AIW Local 267 as the representative of the unit of employees employed by Branch to work at National's facility. Branch also assumed a collective-bargaining agreement then in effect between AIW Local 267 and a predecessor personnel leasing firm. This labor agreement had an expiration date of March 4, 1991.

About December 5, 1990, representatives of AIW Local 267, Branch, and National entered into an agreement which provided, inter alia:

> In the event that BRANCH for any reason ceases to be the employer of persons in the bargaining unit at the Detroit plant of NATIONAL, NATIONAL shall forthwith recognize the UNION as the exclusive bar-

> gaining representative of employees in the appropriate unit; and it shall honor and assume any collective-bargaining agreement in force and effect between BRANCH and the UNION; and further, NATIONAL shall assume any outstanding liabilities and obligations under the Collective-Bargaining Agreement . . . .

Shortly before March 5, 1991, Branch informed National that it intended to lock out the unit employees at National's plant and to continue operations using replacement employees. In *Branch International Services*, 310 NLRB 1092 (1993), enfd. mem. 12 F.3d 213 (6th Cir. 1993). The Board found that the ensuing lockout was unlawful. The Board ordered Branch, as part of the remedy for its unfair labor practices, to offer reinstatement to the locked-out employees and to make them whole for lost earnings and benefits. Neither of the Respondents here, National and Amstaff, was a party in that proceeding. The administrative law judge's decision in *Branch* specifically noted that National was not alleged or shown to be a single or joint employer with Branch. 310 NLRB at 1094.

By letter dated May 19, 1992, Branch informed National that it was canceling its lease effective August 8, 1992. National thereafter discussed entering into a leasing agreement with Respondent Amstaff. Sometime between June and August 1992, National officials informed Amstaff officials that there had been some problems involving Branch and the Board stemming from Branch's lockout of employees working at National's plant.

In early August 1992, Amstaff President Gregory Packer spoke to the production and maintenance employees then employed at National's plant and informed them that Amstaff would hire all of them at the same wages they were currently earning and with the same vacation benefits. Packer told them they would receive different life insurance and health insurance benefits. Amstaff initially hired all but 2 or 3 of the approximately 65 unit employees working for Branch at National's plant in August 1992. All of these employees hired by Amstaff had been hired originally by Branch as replacements for the employees that Branch had unlawfully locked out. Amstaff also hired four of the first-line supervisors working for Branch at the National plant. Later, Amstaff hired two of the three unit employees not initially hired as well as several of the locked-out employees.

About August 14, 1992, National and Amstaff formally executed a personnel-leasing agreement, which was effective from August 7, 1992. The operations of National's plant continued without hiatus during the transition from Branch to Amstaff. The General Counsel does not contend that Branch and Amstaff engaged with each other in any negotiations or other direct business dealings when Amstaff succeeded Branch as the lessor of unit employees at National's plant. Furthermore, the General Counsel does not contend that Branch and Amstaff have common ownership, or common corporate officers, or directors between themselves, or between National and either of them.

An August 25, 1992 letter from AIW Local 267 to National, asserted that National was the employer of the unit employees and was obligated to recognize and bargain with the Union. A September 9 letter from AIW Local 267 to National reiterated the recognition demand and added a request that National reinstate the employees locked out by Branch. Representatives of National and AIW Local 267 met sometime in September or October 1992. At that time, AIW Local 267 demanded that National reinstate the locked-out employees and repeated its demand that National negotiate with it for a new contract. At that meeting, as well as in a letter dated October 16, 1992, Respondent National suggested that AIW Local 267 speak to representatives of Amstaff.

Representatives of AIW Local 267 and Amstaff did meet on about December 8, 1992. AIW Local 267 presented contract proposals, including a proposal that Amstaff reinstate the locked-out employees. Amstaff's attorney stated that Amstaff had nothing to do with the lockout and therefore did not feel obligated to return the locked-out employees to work. He also stated that he needed time to review the Union's proposals and suggested that the parties meet again in several weeks.

When these parties met again on January 11, 1993, Amstaff submitted written counterproposals. AIW Local 267 repeated its demand that Amstaff reinstate the locked-out employees and bargain about their terms and conditions of employment, and Amstaff repeated its refusal. Amstaff also rejected AIW Local 267's proposal that Amstaff enter into a three-party agreement with it and National, similar to the agreement which this Union, National, and Branch had entered in 1990. Amstaff indicated that it was ready to negotiate a labor agreement for the bargaining employees whom it currently employed. AIW Local 267's representative, William Lange, asserted that Amstaff's refusal to reinstate the locked out employees was unlawful and that AIW Local 267 would file unfair labor practice charges.

In a letter dated February 1, 1993, Amstaff invited AIW Local 267 to bargain further. AIW Local 267 did not reply to that letter or attempt to arrange any further negotiating sessions with Amstaff.

National and Amstaff maintained their personnel leasing arrangement from August 1992 until December 31, 1995. During this time, the degree of control and supervision exercised by National over Amstaff's employees at National's facility was the same as that exercised by National over Branch's employees at the same facility. Amstaff, and not National, (1) made all decisions relating to hiring and firing, without recommendations by National; (2) determined unit employees' wage rates and benefits; (3) determined unit employees' job duties, rules of conduct, and working conditions; (4) decided the number and identity of employees to be laid off and recalled; (5) by Amstaff's on-site plant man-

ager, Joseph Pulis, made all staffing and scheduling determinations, decided whether the customers' production needs necessitated overtime, and ordinarily scheduled overtime without prior consultation with National's president, James Aleksa;[1] (6) decided whether to grant unit employees' vacation requests and oversaw the scheduling of such vacations; (7) decided whether to grant sick leave and time off requests, formulated attendance policies, and carried out rules relating to attendance; (8) made and effectuated all unit employee disciplinary decisions,[2] including whether to reinstate discharged employees; (9) provided direct and daily supervision of the unit workforce; (10) compensated the unit employees, was responsible for withholding and remitting required payroll taxes and preparing and submitting relevant tax returns, and represented the employer in unemployment compensation hearings; (11) employed a safety and loss control administrator who supplied Pulis with recommendations regarding unit employee safety issues and who promulgated safety rules and modified production processes to improve safety, consulting with National only where such modifications required significant capital expenditures by National;[3] and (12) if production was interrupted due to equipment failure or other cause, determined whether work shifts would be added or overtime required in order to meet customers' needs. In addition, after Aleksa met with Pulis to review customer satisfaction concerns, Pulis alone determined what personnel actions were necessary. For example, when National decided to institute a quality control system to improve customer satisfaction, Pulis developed the system and caused Amstaff to hire a quality control manager and lab technicians without further input from National. Pulis also conducted quality control meetings when he considered them appropriate, without further involvement by National.[4]

The contractual relationship between Amstaff and National ended on December 31, 1995. National then contracted with another employee leasing agency, HCR4, which performed the same functions for National that Branch and Amstaff had performed during their tenures.

The steel-pickling business of National ended at the Detroit facility in March 1996. In August 1996 the entire facility was leased to a firm which is not a party to this proceeding.

B. Contentions of the Parties

The General Counsel contends that Amstaff, as a successor to Branch under the principles set forth in *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), was obligated to recognize and bargain with AIW Local 267 (and, following the September 23, 1993 merger, the Union) as the exclusive collective-bargaining representative of the production and maintenance employee unit at National's "steel pickling" plant. The General Counsel further argues that National is a joint employer with Amstaff of the bargaining unit employees. The General Counsel then contends that the reinstatement of unit employees who were unlawfully locked out by Branch is a mandatory subject about which Amstaff and National had a statutory obligation to bargain. Alternatively, the General Counsel contends that Amstaff bears remedial responsibility as Branch's successor for the reinstatement of unlawfully locked-out employees under the principles of *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973). In this regard, the General Counsel argues that this case is either distinguishable from *Glebe Electric*, 307 NLRB 883 (1992), where the Board refused to extend *Golden State* liability to a company that lacked any business relationship to the predecessor entity that committed unfair labor practices, or the Board should take this occasion to reexamine the holding in *Glebe Electric*. Under either successorship theory of violation, the General Counsel seeks through the complaint and through argument in his brief to the Board only a finding that Amstaff and National unlawfully refused to bargain about the subject of reinstating employees locked out by Branch. There is no contention that the Respondents unlawfully refused to reinstate these employees.

For its part, National denies any joint employer relationship with Amstaff and any remedial responsibility for Branch's unfair labor practices. Amstaff contends that reinstatement of the unlawfully locked-out employees is not a mandatory subject of bargaining. It further contends, relying on *Glebe Electric*, supra, that it can have no remedial bargaining liability on this subject.

C. Discussion

1. Was National a joint employer with Amstaff of unit employees?

[1] Aleksa determined production and shipping priorities, based on the needs of National's customers, and communicated those priorities to Pulis. From this information, Pulis and, not National, made all staffing and scheduling determinations, such as the number of unit employees to utilize on a given work shift, and the work hours for each employee. In those instances when Pulis determined that unanticipated or substantial overtime was required, he first informed Aleksa of the added cost that National would incur. Aleksa then decided whether National would absorb the added overtime cost or would instead secure the customer's permission for a later delivery. Pulis would decide the personnel consequences of Aleksa's decision, such as scheduling, adjustment of hours, and staffing.

[2] Although the written leasing agreement between National and Amstaff provided that National may suspend employees for periods not to exceed 3 days, National neither exercised nor attempted to exercise that provision.

[3] National, as owner of the building and equipment of the Detroit steel-pickling plant, would also alert Amstaff representatives of employee practices that could lead to safety problems. Amstaff alone decided what personnel actions, if any, to take to ameliorate the problems. For instance, following a serious employee injury, Amstaff secured a trauma counselor to assist the employees in dealing with the event.

[4] When Aleksa determined that customer satisfaction would be enhanced by offering quality control training, Pulis, then employed as Branch's plant manager, arranged for and scheduled employee training through National's principal customer, Great Lakes Steel.

As summarized in *Laerco Transportation*, 269 NLRB 324, 325 (1984):

> The joint employer concept recognizes that two or more business entities are in fact separate but that they share or codetermine those matters governing the essential terms and conditions of employment.[10] Whether an employer possesses sufficient indicia of control over . . . employees employed by another employer is essentially a factual issue. To establish joint employer status there must be a showing that the employer meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction.
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> [10] *Boire v. Greyhound Corp.*, 376 U.S. 473 (1964); *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117 (3d Cir. 1982), enfg. 259 NLRB 148 (1981).

In examining the relationship between National and Amstaff, we find that National did not possess sufficient control over Amstaff employees to support a joint-employer finding. The stipulated facts show that Amstaff officials, principally including Plant Manager Pulis, exercised virtually total control over all aspects of the terms and conditions of employment of the unit employees, included their hiring, firing, wage rates and benefits, job duties, rules of conduct, layoffs, overtime, vacations, sick and other leave, disciplinary actions, direct and daily supervision, all matters relating to compensation, safety rules, interruption of production, and work shifts.

In those few instances in which National officials may have affected unit employees, they did so only indirectly. The stipulated record contains examples of limited situations in which Amstaff would consult with National prior to incurring overtime expenses, implementing safety procedures, or responding to customer satisfaction concerns. In each example, however, Amstaff officials would unilaterally determine the personnel consequences for unit employees. In fact, it appears that the sole control possessed by National over unit employees was the right in its leasing agreement with Amstaff to suspend employees for up to 3 days. National never attempted to exercise that authority.

In sum, the evidence shows that Amstaff exercised virtually exclusive control over all major elements of the terms and conditions of employment of the unit employees and that National's input was scant and largely indirect. We find it clear that National did not share or codetermine essential terms and conditions of employment of the unit employees and did not possess sufficient control over these employees to support a finding of joint-employer status.[5] We therefore reject the General Counsel's argument that National, as a joint employer with Amstaff, had any duty to bargain with AIW Local 267 or its successor, the Union.[6] We therefore dismiss the complaint allegations of unfair labor practices by Respondent National. We shall now turn to a discussion of whether Amstaff had any bargaining obligation and, if so, whether it included the obligation to bargain about reinstatement of the unit employees whom Branch unlawfully locked out.

2. Did Amstaff have an obligation to bargain as *Burns* successor about reinstating the locked-out employees?

a. Burns' successorship

In determining whether an employer is properly regarded as a successor of a predecessor employer under *NLRB v. Burns Security Services*, 406 U.S. 272 (1972),

> the focus is on whether there is "substantial continuity" between the enterprises. Under this approach, the Board examines a number of factors: whether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and basically has the same body of customers. See *Burns*, 406 U.S. at 280, n. 4; *Aircraft Magnesium, A Division of Grico Corp.*, 265 NLRB 1344, 1345 (1982), enf'd 730 F.2d 767 (CA9 1984); *Premium Foods, Inc.*, 260 NLRB 708, 714 (1982), enf'd 709 F.2d 623 (CA9 1983).
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> In conducting the analysis, the Board keeps in mind the question whether "those employees who have been retained will understandably view their job situations as essentially unaltered." See *Golden State Bottling Co.*, 414 U.S. at 184; *NLRB v. Jeffries Lithograph Co.*, 752 F.2d 459, 464 (CA9 1985).[7]

The stipulated record convincingly shows a "substantial continuity" between Branch and Amstaff. In sum (1) the steel-pickling operations at National's Detroit plant continued without hiatus; (2) there was no evidence of any change in the jobs, machinery, equipment, or method of production; (2) Amstaff performed the same personnel leasing services for National that Branch had previously performed; (3) Amstaff initially hired all but 2 or 3 of the approximately 65 production and maintenance employees who worked for Branch prior to the transition in employers; (4) Amstaff later hired two of the three former Branch employees not originally hired as well as several of the employees whom Branch had unlawfully locked out; (5) Amstaff gave these unit employees the same wages and vacation benefits they had received from Branch, but it paid different life insur-

[5] We note that our finding that National is not a joint employer is consistent with the parties' stipulation that it had the same degree of control and supervision over Amstaff employees as it had over Branch's employees and with the judge's observation in *Branch* that there was no suggestion on the record or by the General Counsel that National was a joint or single employer with Branch. 310 NLRB at 1094.

[6] We note that the General Counsel does not contend here that National had any obligation to bargain with AIW Local 267 based on the December 5, 1990 agreement, signed by Branch, National, and AIW Local 267.

[7] *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27, 42–43 (1987).

ance and health insurance benefits; and (6) Amstaff hired Branch's plant manager as well as four of its first-line supervisors. Under these circumstances, unit employees continuing to work for Amstaff in the National plant would "understandably view their job situations as essentially unaltered."[8] We conclude that Amstaff was a successor of Branch within the meaning of *Burns* and was therefore obligated to bargain with the Union about the terms and conditions of employment for the unit employees.[9]

b. Mandatory subject of bargaining

The General Counsel asserts that the unlawfully locked-out employees retained their status as unit employees, so that Amstaff was obligated to bargain about their working conditions, particularly including their reinstatement. We agree with the General Counsel.

Section 2(3) of the Act defines an employee as including "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment." Clearly, the employees whom Branch unlawfully locked out retained their statutory employee status under this definition for as long as Branch remained the employer of the unit employees working in National's plant. The only question here is whether the succession from Branch to Amstaff extinguished that employee status. We find that it did not.

As a new employer of production and maintenance employees at the Detroit plant, Amstaff was free to select employees other than those who composed the predecessor's work force.[10] Instead, it chose to hire essentially the same work force. As a consequence of this and other factors reviewed above, Amstaff thereby succeeded to Branch's bargaining obligation. In light of the substantial continuity of the bargaining unit, even including several of the unlawfully locked out employees, we perceive no reason in policy or precedent to hold that the remaining locked-out employees lost their employee status as a result of the succession in employers. On the contrary, "[t]he objectives of national labor policy, reflected in established principles of federal law, require that the rightful prerogative of owners independently to rearrange their businesses and even eliminate themselves as employers be balanced by some protection to the employees from a sudden change in the employment relationship . . . ." *John Wiley & Sons v. Livingston*, 376 U.S. 543, 549 (1964).[11] This would seem to be especially true where the employees in question would have been actively employed at the time of transition and, presumably, would have been hired by Amstaff but for the predecessor's unfair labor practices.

The return to active employment of a bargaining unit employee clearly concerns a condition of employment and is therefore a mandatory subject of bargaining.[12] Having found that the unit employees unlawfully locked out by Branch retained their employee status and identity among Amstaff's employees in the bargaining unit at National's plant, and that Amstaff was obligated as a *Burns* successor to bargain with AIW Local 267, we conclude that Amstaff violated Section 8(a)(5) when it refused the Union's request to bargain about the reinstatement issue on and after December 8, 1992.[13]

CONCLUSIONS OF LAW

Amstaff was a successor of Branch within the meaning of *Burns*, and, on that basis, was obligated to bargain with the AIW Local 267, and thereafter with the Union, regarding the terms and conditions of employment of the employees in the bargaining unit of production and maintenance employees working in National's steel-pickling plant in Detroit, Michigan. This bargaining obligation included the obligation to bargain, on request, about the reinstatement of unit employees unlawfully locked out by Branch on and after March 5, 1991. By refusing on and after December 8, 1992, to bargain about reinstatement of the locked-out employees, Respondent Amstaff violated Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that Respondent Amstaff has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. As previously noted, Amstaff has cancelled its personnel leasing agreement with National, and National has ceased steel-pickling operations at the Detroit, Michigan plant. We shall therefore conditionally order Respondent Amstaff, should it resume leasing employees to National Metal Processing, Inc. for that com-

[8] *Golden State Bottling Co. v. NLRB,* 414 U.S. 184 (1973).

[9] Moreover, there is no claim that AIW Local 267 did not continue to have majority support among unit employees after Amstaff became lessor of personnel services to National. Indeed, Amstaff at least implicitly appears to have acknowledged its general bargaining obligation to this union by negotiating with it on and after December 8, 1992.

[10] *NLRB v. Burns*, 406 U.S. at 280, and fn. 5.

[11] See generally *Chemrock Corp.*, 151 NLRB 1074, 1077–1079 (1965).

[12] E.g., *Quality Packaging, Inc.*, 265 NLRB 1141, 1148–1149 (1982) (recall of laid-off employees); *Food Service Co.*, 202 NLRB 790, 804 (1973) (recall of economic strikers).

[13] We emphasize that the violation here is a refusal to bargain about reinstatement. Our conclusion does not imply any remedial obligation by Amstaff to reinstate, nor does it in any way limit Branch's reinstatement and backpay remedial obligation to those employees whom it unlawfully locked out.

The General Counsel argues in the alternative that Amstaff bears remedial responsibility as Branch's successor to bargain about the reinstatement of unlawfully locked-out employees under the principles of *Golden State Bottling Co. v. NLRB*, supra. We note that a finding of *Golden State* successorship would ordinarily result in the imposition of full joint and several liability on the successor for the predecessor's unfair labor practices. Here, however, the General Counsel specifically seeks in the complaint no more remedy through the *Golden State* theory than can be gained though the *Burns* theory: that is, a refusal to bargain finding and an order to bargain about reinstatement. Because an additional finding of *Golden State* liability has no effect on the remedy in this case, we find it unnecessary to pass on the General Counsel's alternative argument.

pany's steel-pickling operations, to bargain, on request, with Local 7267, United Paperworkers Union, AFL–CIO as the exclusive representative of the employees in the appropriate bargaining unit, regarding those employees' terms and conditions of employment, including the reinstatement to employment of those employees unlawfully locked out by Branch International, Inc., on March 5, 1991, and to reduce to writing any agreement reached as a result of such bargaining.[14]

ORDER

The National Labor Relations Board orders that the Respondent, Amstaff, Inc., Novi, Michigan, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Refusing to bargain collectively with Local 7267, United Paperworkers International Union, AFL–CIO, as the exclusive bargaining representative of the employees in the following appropriate unit regarding the terms and conditions of employment of these employees, including the reinstatement to employment of the employees unlawfully locked out by Branch International, Inc., on March 5, 1991:

> All production and maintenance employees, including truckdrivers and shipping and receiving employees employed by National Metal Processing, Inc. at its facility located at 6440 Mack Avenue, Detroit, Michigan; but excluding office clerical employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) If and when the Respondent resumes leasing employees to National Metal Processing, Inc., for that Company's steel-pickling operations, bargain, on request, with Local 7267, United Paperworkers International Union, AFL–CIO as the exclusive representative of the employees in the above-described appropriate bargaining unit, regarding the terms and conditions of employment of these employees, including the reinstatement of the employees unlawfully locked out by Branch International, Inc., on and after March 5, 1991, and reduce to writing any agreement reached as a result of such bargaining.

(b) Mail to the unit employees employed from December 8, 1992, through December 31, 1995, and to unreinstated unit employees whom Branch International Services, Inc., unlawfully locked out on and after March 5, 1991, copies of the attached notice marked "Appendix."[15] Copies of the notice, on forms provided by the Regional Director for Region 7, after being duly signed by the Respondent's representative, shall be mailed by the Respondent within 14 days after receipt thereof.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the Local 7267, United Paperworkers International Union, AFL–CIO as the exclusive bargaining representative in the appropriate bargaining unit described below regarding the terms and conditions of these employees, including the reinstatement to employment of the employees unlawfully locked out by Branch International, Inc., on March 5, 1991. The appropriate unit is:

> All production and maintenance employees, including truckdrivers and shipping and receiving employees employed by National Metal Processing, Inc. at its facility located at 6440 Mack Avenue, Detroit, Michigan; but excluding office clerical employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, if and when we resume leasing employees to National Metal Processing, Inc., for that Company's steel-pickling operations, bargain, on request, with Local 7267, United Paperworkers International Union, AFL–CIO as the exclusive representative of the employees in the terms and conditions of employment of these employees, including the reinstatement to employment of the employees unlawfully locked out by Branch International, Inc., on March 5, 1991, and reduce to writing any agreement reached as a result of such bargaining.

AMSTAFF, INC.

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[14] See, e.g., *Dunmyre Motor Express, Inc.*, 275 NLRB 299 (1985) (the bargaining order conditioned upon the respondent resuming operations).

[15] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."